

in APC's proposed rules would also lighten the burden on the Commission, expedite grants, and ensure that only the best applicants would be selected as licensees. See Attachment A (Proposed Sections 22.2002-22.2011).

APC recognizes that the use of comparative hearings, even as dramatically overhauled by APC's recommendation, is a controversial proposal. Accordingly, APC believes that the licensing question may be an area where the notice of proposed rule making should not set forth a tentative recommendation but should seek public comment in a more open-ended fashion. In the event the Commission would substitute different rule provisions for those submitted in Attachment A as APC's proposed rule sections, this step could be readily taken without requiring recrafting of the entire proposed regulatory plan outlined in APC's proposed rules. In short, APC's allocation and assignment plan and other proposals are severable from its licensing proposal.

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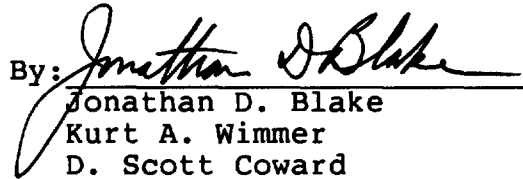
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For the foregoing reasons, APC urges the Commission  
to issue a Notice of Proposed Rule Making for PCS.

Respectfully submitted,

AMERICAN PERSONAL  
COMMUNICATIONS

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**ATTACHMENT A**  
**PROPOSED RULES**

1. Section 1.1105 would be amended by adding new subparagraph 22 as follows:

**§ 1.1105 Schedule of Charges for Common Carrier Services.**

Action	FCC Form No.	Fee Amount	Code	Address
*	*	*		
22. Personal Communications Service:*/				
a. New facilities:	501**/	50,000.00	PCS	FCC, PCS Systems, P.O Box 358130, Pittsburgh, PA
b. Hearing fee:	N/A	50,000.00	PCS	FCC, PCS Systems, P.O Box 358130, Pittsburgh, PA
c. Major modifications:	501	230.00	PCS	FCC, PCS Systems, P.O Box 358130, Pittsburgh, PA
d. Minor modifications:	589	60.00	PCS	FCC, PCS Systems, P.O Box 358130, Pittsburgh, PA
e. Assignment or transfer:	490 & 155	230.00	PCS	FCC, PCS Systems, P.O Box 358130, Pittsburgh, PA
f. License to cover CP:	589 & 155	60.00	PCS	FCC, PCS Systems, P.O Box 358130, Pittsburgh, PA
g. Renewal:	405 & 155	60.00	PCS	FCC, PCS Systems, P.O Box 358130, Pittsburgh, PA
h. Extension of time to complete construction:	589 & 155	60.00	PCS	FCC, PCS Systems, P.O Box 358130, Pittsburgh, PA

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\*/ Fees collected under Paragraph 22 of this section shall be coded "PCS" and deposited into a segregated account. The Commission's staff is authorized to use such funds to offset costs associated with the authorization of PCS licensees under Subpart N of Part 22.

\*\*/ [FCC Forms 501 and 589 will be forms analogous to FCC Forms 401 and 489 for cellular uses, but will be drafted to incorporate the unique requirements of PCS systems.]

i. Special temporary authority:	Letter & 155	200.00	PCS	FCC, PCS Systems, P.O Box 358130, Pittsburgh, PA
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2. Subpart J of Part 1 would be amended as follows:

- a. Section 1.1401 would be amended by adding the term "or PCS system" after the term "cable television."
- b. Section 1.1402(b) would be amended by adding the term "or PCS system" after the term "cable television system."
- c. Section 1.1402(c) would be amended by adding the term "PCS microcells," after the word "cables."
- d. Section 1.1402(d) would be amended by adding the term "or PCS licensee" after the term "cable television system operator" and the term "PCS licensees' association," after the term "cable television association."
- e. Sections 1.1402(f), 1.1403(a), 1.1403(b), 1.1404(d), 1.1404(d)(2), 1.1404(h) would be amended by adding the term "or PCS licensee" after the term "cable television system operator."
- f. Section 1.1404 would be amended by adding the term "or PCS licensee" after the term "cable television company."
- g. Section 1.1404(b) would be amended by adding the term "utility, cable television system operator or PCS licensee" and deleting the term "utility or cable television system."
- h. Section 1404(g)(12) would be amended by adding the term "or PCS licensee" after the term "CATV operators."

3. Section 2.106 would be amended by revising the allocations for the frequencies from 1850-1990 MHz and 37-39.5 GHz and adding new footnote US 211A, as follows:

**§ 2.106 Table of Frequency Allocations.**

United States Table		FCC Use Designators	
Government	Non-Government	Rule Part(s)	Special-Use Frequencies
Allocation	Allocation		
(4)	(5)	(6)	(7)
* * *			
* * *	1850-1990 MHz	PCS (22) PRIVATE OPERATIONAL FIXED MICROWAVE (94) (licensed before [7/1/91]) Private Operational Fixed Microwave (94) (licensed on or after [7/1/91]) US 211A	
* * *	37.0-38.6 GHz FIXED. MOBILE.	DOMESTIC PUBLIC FIXED (21). PRIVATE OPERATIONAL-FIXED MICROWAVE (94). PCS MICROWAVE (94).	
* * *	38.6-39.5 GHz FIXED. MOBILE. FIXED-SATELLITE (space-to-Earth)  US 291	DOMESTIC PUBLIC FIXED (21). PRIVATE OPERATIONAL-FIXED MICROWAVE (90) PCS MICROWAVE (24). Auxiliary Broadcasting (74).	

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**UNITED STATES (US) FOOTNOTES**

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US 211A The 1850-1990 MHz band is allocated to the personal communications service ("PCS") under Part 22 and the private operational fixed microwave ("OFS") service under Part 94. The allocation is co-primary as to OFS licenses issued before [July 1,

1991].\*/ As to licenses issued on or after [July 1, 1991], OFS operations are licensed on a secondary basis to PCS operations.

4. Section 21.701(a) would be amended by replacing the text of footnote four with the following text:

<sup>4</sup> Frequencies in this band are shared with PCS microwave and other fixed and mobile stations licensed in other services.

5. Section 22.2 would be amended by inserting the following additional definitions within the text of the rule at the appropriate alphabetical locations:

**§ 22.2 Definitions.**

*Enhanced CT-2.* CT-2 service that combines a paging unit with the portable CT-2 unit, allowing a CT-2 user to receive paging communications.

*Microcell.* The area reliably served by a transmitter location in a PCS system.

*Personal Communications Network ("PCN").* A PCS system consisting of a contiguous network of public and private base stations, which connect with each other and with the local exchange telephone network, and portable handset units, which communicate directly with base stations. Voice, data or other transmissions from portable units are received by base stations and placed on the network. Information received from the network is transmitted by a base station to a portable unit. Portable

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\*/ [Used as a representative date to indicate the date on which the Commission institutes a rulemaking proceeding to allocate spectrum to PCS in the 1850-1990 MHz band. OFS licensees operating before this date would be grandfathered into co-primary status with PCS. OFS licensees operating under authorizations issued on or after this date would operate on a secondary status to PCS.]

units have the capacity both to initiate and receive communications through the network.

*Personal Communications Services ("PCS").* A family of radiotelephone services permitting use of small, low-cost portable handsets, relying on high-capacity microcellular systems in which assigned spectrum is divided into discrete channels, which are assigned in groups to grids of low-power microcells covering PCS Service Areas, permitting extremely efficient frequency reuse.

*PCS Service Area.* The geographic area served by a PCS system within which the PCS licensee is authorized to provide service.

*Second Generation Cordless Telephone ("CT-2") System.* A PCS system consisting of public and private base stations, which connect with the local exchange network, and portable handset units which communicate directly with base stations. Voice transmissions are initiated by the portable unit, received by a base station, and then directed through the local exchange telephone network. Information received from the local exchange network is transmitted by a base station back to the portable unit that initiated the communication.

6. Section 22.9(c) would be amended by adding the term "*and PCS portable units*" in the heading after the term "*land mobile stations.*"

7. Section 22.9 would be amended by adding new subparagraph (e) as follows:

**§ 22.9      Standard application forms and  
              permissive changes or minor  
              modifications for the public  
              mobile service.**

(e) *License for base stations -- PCS.* Subparagraph (a) of this section shall not apply to the personal communications service. A single "blanket" authorization shall be issued for all base stations initially proposed by a PCS

licensee. Minor modifications to the initial complement of PCS base stations are permissive and may be implemented without prior Commission consent. Major modifications may only be implemented upon Commission consent.

- (1) Minor modifications to a licensee's PCS base station complement, defined as any modifications that would not alter the size of the licensee's PCS Service Area, must be reported annually on FCC Form 589.
- (2) Major modifications to a licensee's PCS base station complement, defined as any modifications that would alter the size of the licensee's PCS Service Area, may only be implemented upon receipt of Commission consent after the filing of an application on FCC Form 501. Any construction required for the major modification for which consent is sought may commence within 30 days of the date on which the application is placed on public notice.

8. Section 22.15(a) would be amended by replacing the parenthetical notation "(see Subparts C, F, G, H, I, J and K as appropriate)" with the notation "(see Subparts C, F, G, H, I, J, K and N as appropriate)."

9. Section 22.15 would be amended by adding new subparagraph (o) as follows:

**§ 22.15 Technical content of applications.**

- (o) In the personal communications service, each application shall contain the information required by Subpart N of this part.

10. Section 22.16(d) would be amended by inserting the words "or the personal communications service" at the end of the second sentence.



11. Section 22.23 would be amended by adding new subparagraph (c)(5) as follows:

**§ 22.23 Amendment of applications.**

- (5) If in the personal communications service, the amendment results in an increase in the PCS Service Area.

12. Section 22.43 would be amended by adding new subparagraph (f) as follows:

**§ 22.43 Period of construction.**

**(f) *Personal Communications Service.***

- (1) Construction of an initial phase of the system, which must consist of one percent or more of the microcell base stations in the technical plan submitted by the applicant under Section 22.2005(b) of this part, must be completed and service to the public must be available within 18 months of the date on which the authorization was granted. Service may commence on the date on which an FCC Form 589 reporting availability of service is placed in the mail to the Commission. Failure to have service available to the public in a timely manner will result in termination of the authorization.
- (2) Notwithstanding subparagraph (f)(1) of this section, if a PCS permittee demonstrates prior to the expiration of the 18-month period that microwave congestion prevents activation of the system, the PCS permittee may be granted an additional 12 months to accommodate existing microwave users and satisfy the requirements of subparagraph (f)(1) of this section.
- (3) If a PCS licensee fails to provide 75 percent coverage of the PSA within 36

months of the initial license grant, the licensee will be required to reduce the PSA to meet the 75 percent coverage.

- (4) Applications by parties other than initial PCS licensees for areas outside a licensee's PSA in the area specified in the original Public Notice announcing the acceptance of applications for a market will not be accepted for five years from the date of the grant of the original construction authorization for each PCS system in the market.

13. Part 22 of the Commission's Rules would be amended by adding a new Subpart N, to read as follows:

**§ 22.2000 Scope.**

The rules in this subpart govern the licensing and operation of the personal communications service ("PCS"). The licensing and operation of PCS is also subject to rules elsewhere in this Part that apply generally to the public mobile services and to rules elsewhere in this title that apply to the Commission's application and licensing procedures. In case of conflict, however, the rules in this subpart will govern.

**§ 22.2001 Eligibility.**

Authorizations in the personal communications service will be issued to existing and proposed communications common carriers. An application will be granted only if it is shown that the applicant is legally, financially, technically, and otherwise qualified to render the proposed service and that the public interest, convenience and necessity would be served by a grant thereof.

**§ 22.2002 Frequencies.**

- (a) *Frequencies available.* The frequencies available in the Personal Communications Service are 1850-1990 MHz, in accordance with the Frequency Allocations of § 2.106. The allocation is co-primary as to private

operational fixed service ("OFS") licenses issued before [July 1, 1991].<sup>\*/</sup> As to OFS licenses issued on or after [July 1, 1991], OFS operations are licensed on a secondary basis to PCS operations.

- (b) *Frequency assignments.* Each frequency block available for use by PCS systems in this service shall be assigned to a single applicant in any PCS system service area. No fewer than two PCS systems shall be authorized in each such area. In the event harmful interference occurs or appears likely to occur between two or more radio systems and such interference cannot be resolved between the licensees thereof, the Commission may require the licensees to make such changes in operating techniques or equipment as it may deem necessary to avoid such interference.
- (c) *Sharing criteria.* The undesired signal level of the PCS base stations and portable units authorized under this section shall be \_\_\_\_ dB below the desired signal level of a co-channel private operational fixed microwave service ("OFS") licensee measured at the microwave receiver, as determined by the standards in [APC Report on Sharing Criteria to be submitted].
- (d) *Resolution of interference conflicts.* PCS licensees and OFS licensees should negotiate to resolve interference concerns. If an interference conflict cannot be resolved without migration of OFS licensees to a different frequency or technology and a migration agreement cannot be negotiated by the parties, the PCS licensee may petition the Commission for an order requiring the OFS licensee to migrate. Such a petition for migration must include an estimate of the

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<sup>\*/</sup> [Used as a representative date to indicate the date on which the Commission institutes a rulemaking proceeding to allocate spectrum to PCS in the 1850-1990 MHz band. OFS licensees operating before this date would be grandfathered into co-primary status with PCS. OFS licensees operating under authorizations issued on or after this date would operate on a secondary status to PCS.]

reasonable cost of relocation and a firm commitment by the PCS licensee to reimburse the OFS licensee for the reasonable costs of relocation.

**§ 22.2003 Filing of applications.**

- (a) *Filing period.* The Commission will specify by Public Notice a period for filing applications for a new authorization in the personal communications service. The filing period will open no less than thirty (30) days after release of the Public Notice and will remain open for five (5) working days.
- (b) *Forms and fees required.* Applications for new authorizations in the personal communications service may be filed only on the dates specified by the Commission. Applications shall be filed on FCC Form 501, "Application for Authorization in the Personal Communications Service," shall conform to the requirements of Section 22.6 of this part, and shall be accompanied by the appropriate fee specified in Subpart G of Part 1 and written affirmative direct case exhibits as specified in Section 22.2005 of this subpart.

**§ 22.2004 Applications unacceptable for filing.**

- (a) *Mutually exclusive applications.* When there is a pending application for an authorization in the personal communications service or for major changes in a PCS system, no other application that would be directly mutually exclusive with the pending application may be filed by the same applicant or by any applicant in which any individual in common with the pending application has any interest, direct or indirect, except that interests less than one percent shall not be considered.
- (b) *Contingent applications.* Contingent applications for new authorizations or changes in facilities of existing PCS systems are not acceptable for filing.

**§ 22.2005 Affirmative direct case.**

At the time of application, each applicant shall provide direct case exhibits specifically describing the applicant's qualifications, proposals or position as to each of the following elements. An applicant's affirmative direct case shall comprise all documentary evidence upon which the applicant intends to rely in a comparative context.

- (a) *Pioneer's preference.* If an applicant believes it is entitled to a pioneer's preference in the market in question, it shall submit a direct case exhibit setting out fully the grounds for such a preference and demonstrating that it is financially and otherwise qualified to operate the system in question.
- (b) *Financial qualifications.* An applicant must demonstrate that it has either a firm financial commitment or available financial resources necessary to construct all proposed facilities and operate them for one year without revenues.
  - (1) The firm financial commitment required above shall be obtained from a state or federally chartered bank or savings and loan association, another recognized financial institution, or the financial arm of a capital equipment supplier, and shall contain a statement that the lender:
    - (A) Has examined the financial condition of the applicant, including audited financial statements, and has determined that the applicant is creditworthy;
    - (B) That the lender is committed to providing a sum certain to the particular applicant;
    - (C) That the lender's willingness to enter into the commitment is based solely on its relationship with the applicant; and
    - (D) That the commitment is not in any way guaranteed by any entity other than the applicant.

- (2) An applicant intending to rely on personal or internal resources must submit:
  - (A) Financial statements and a balance sheet audited by certified public accountants, certified within one year of the date of the application, indicating the availability of sufficient net liquid assets to construct and operate the proposed system for one year.
  - (B) "Net liquid assets" is considered to be the excess of current assets (readily converted to cash) over current liabilities. In order to demonstrate ready convertability into cash, the identity, liquidity, and value of listed assets must be demonstrated. Non-liquid assets can be relied on if the marketability of those assets is documented.
- (c) *Technical exhibit.* A technical description of the proposed system, demonstrating compliance with all applicable technical requirements and describing how the proposed system would operate, if authorized, must be submitted. This exhibit must include:
  - (1) The number of microcellular base stations to be used, their locations, and the type and quantity of equipment proposed for the system;
  - (2) A complete description of the procedures, transmission methods, and data protocols to be used; and
  - (3) A proposal for spectrum usage and a plan for avoiding interference to licensees in the private operational fixed microwave service, including interference studies responsive to Section 22.15.
- (d) *Service plan.* A service plan containing a detailed and specific proposal for system design, a schedule for construction and commencement of service, and a description of services to be offered must be submitted. This

plan must describe with specificity the services to be provided by the applicant, and any plans for adding additional or evolving services to the applicant's proposal. Marketing, selling, billing, customer services, and customer support plans, including tariff and/or pricing proposals, shall also be discussed.

**§ 22.2006 Processing of applications.**

- (a) *Initial Analysis.* After acceptance of applications pursuant to Section 22.26 of this part, the staff shall perform an initial analysis of each application. The initial analysis shall be promptly incorporated in a hearing designation order, preferably within ninety (90) days of the close of the application filing period.
  - (1) The Commission's staff is authorized to procure advisory and assistance services of outside contractors to assist in performing the initial analysis under Title 48, Part 37.
  - (2) The Commission's staff is authorized to procure additional staff members from other federal agencies to assist in performing the initial analysis under 5 U.S.C. § 583(d).
- (b) *Hearing designation order.* As soon as practicable and, if possible, within thirty (30) days of completion of the staff's detailed analysis of the applications accepted for filing, the Common Carrier Bureau shall issue a hearing designation order.
- (c) *Pioneer's preference.* If the staff's initial analysis determines that a pioneer's preference is established by any applicant, the Common Carrier Bureau shall immediately issue an order granting that application and denying all mutually exclusive applications. Should the staff determine that an applicant may be entitled to a pioneer's preference but that a substantial and material question of decisional fact must be resolved to determine the applicant's entitlement thereto, the hearing

designation order issued under subparagraph (b) of this part shall specify that the issue of the applicant's entitlement to a pioneer's preference shall be resolved immediately by the presiding judge in an interim initial decision after an expedited hearing to be held prior to the regular hearings specified under this subpart.

- (d) *Hearing fee.* Payment of the hearing fee required under Section 1.1105 of Part 1 shall be made within ten (10) days after the settlement period described in Section 22.2007 of this subpart terminates. Failure to timely pay the hearing fee shall result in dismissal of the application. Requests for refund of a hearing fee shall not be entertained, regardless of whether the application is summarily dismissed, whether the applicant is the only party paying the hearing fee, or any other grounds.

**§ 22.2007 Procedures governing settlement.**

- (a) Within fifteen (15) calendar days of release of the hearing designation order, each party listed in the hearing designation order shall attend a settlement conference convened by a settlement judge designated by the Chief Administrative Law Judge as a "neutral" under 5 U.S.C. §§ 581 & 583(a). An administrative law judge may act as settlement judge so long as that judge is not the presiding judge assigned to the comparative case.
  - (1) The Commission's staff is authorized to procure advisory and assistance services of outside contractors to assist or be designated as settlement judges under Title 48, Part 37.
  - (2) The Commission's staff is authorized to procure additional staff members from other federal agencies to assist or be designated as settlement judges under 5 U.S.C. § 583(d).
- (b) Each party shall be represented by a principal with full authority to resolve the case by consent and, if it chooses, by counsel.



Additional settlement conferences may be held as agreed by the parties and the settlement judge.

- (c) Within fifteen (15) days of the initial settlement conference, the parties shall file with the settlement judge a joint statement specifying either that settlement does not appear probable or that settlement in principle has been reached. Should the parties contemplate that a settlement may be consummated, they shall provide a joint assessment of the time necessary to consummate the settlement.
- (d) The settlement judge may accept or modify the parties' proffered date by which consummation is to be completed. The settlement judge shall issue an order setting a date certain by which the case may be settled, which shall not be in excess of ninety (90) days after the issuance of the hearing designation order.
- (e) If a competing applicant seeks to dismiss or withdraw its application after the date specified in the order required by subparagraph (d) of this section, the applicant must submit to the presiding judge a request for approval of the dismissal or withdrawal of its application, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:
  - (1) A certification that neither the applicant nor its principals received or will receive any money or other consideration in excess of the legitimate and prudent expenses of the applicant;
  - (2) The exact nature and amount of any consideration paid or promised;
  - (3) An itemized account of the expenses for which it seeks reimbursement;
  - (4) A statement that its application was not filed for the purpose of reaching or carrying out an agreement with any other applicant regarding the dismissal or withdrawal of its application; and

- (5) The terms of any oral agreement relating to the dismissal or withdrawal of its application.
- (6) For purposes of this section:
  - (A) "Legitimate and prudent expenses" are those expenses reasonably incurred by an applicant in preparing, filing, and prosecuting its application.
  - (B) "Other consideration" consists of financial concessions, including but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as nonfinancial concessions that confer any type of benefit on the recipient.
  - (C) The terms of this section shall not be construed to prevent joint ventures among applicants from being formed after the date specified in subparagraph (d) of this section [under principles to be determined in this rule making].

**§ 22.2008 Standard document production order.**

- (a) Within thirty (30) days of the release of the hearing designation order, copies of the documents detailed below shall be produced by each applicant or objections on grounds of privilege must be lodged:
  - (1) All formation and organization documents, including articles of incorporation, bylaws, partnership agreements, voting rights, proxies, and any amendments to the foregoing documents;
  - (2) All minutes of meetings relating to the application;
  - (3) All documents relating to the rights or plans of persons or entities to purchase an interest in the applicant or of current owners to alienate their interests;

- (4) All documents relating to pledges, mortgages, security interests, or other kinds of encumbrances of any kind with respect to the application;
  - (5) All bank letters and other financing documents with the dollar amounts unexpurgated;
  - (6) All documents relating to communications by proposed integrated principals with respect to their proposed participation in the management of the PCS system;
  - (7) All documents relating to communications by and between principals of the applicant concerning the application, including communications between active and passive principals;
  - (8) All documents that identify or describe the principals who are responsible for completing the application, arranging financing, obtaining the applicant's transmitter site, publishing the required notices, and retaining attorneys, engineers, and other professionals.
- (b) One complete copy of a set of documents, organized according to the subparagraphs of this section, shall be produced to the Commission's copy contractor, from whom copies may be obtained by each applicant.
- (c) Failure to timely provide documents in response to the standard document production order shall be grounds for dismissal of an application, in the discretion of the presiding judge, upon objection raised on the date of hearing. No motions for dismissal on such grounds, however, will be entertained.

**§ 22.2009 Comparative proceedings.**

- (a) *Prehearing conference date.* The parties shall transmit to the presiding judge a binding prehearing conference date within ten (10) days of the date specified under Section 22.2007(d) of this subpart. The prehearing conference date specified by the parties must be within

the thirty (30) day period following submission of the proposed date to the presiding judge.

- (b) *Hearing date.* Should the presiding judge determinate at the prehearing conference that a hearing shall be held, the parties shall commit to a binding hearing date during the pretrial conference. The hearing date agreed upon by the parties must be within the thirty (30) day period following the prehearing conference. Contested or agreed-upon motions for extensions filed after the prehearing conference shall not be granted on any grounds other than imminent and universal settlement of the comparative case.
- (b) *Procedures.* Any hearing shall be limited to the issues specified in the hearing designation order issued under Section 22.2006(b) of this part. The provisions of subpart B of Part 1 shall govern hearing proceedings in the personal communications service, with the following exceptions:
  - (1) *Oral testimony.* Oral testimony and cross-examination shall be permitted only where, in the sole discretion of the presiding judge, material issues of decisional fact cannot be resolved without oral evidentiary hearing procedures or the public interest otherwise requires oral evidentiary proceedings. Should oral testimony or cross-examination be permitted, the presiding judge shall have full authority to limit the scope of examination. Motions to permit oral testimony shall be entertained at the prehearing conference.
  - (2) *Discovery.* No discovery shall be permitted unless specifically authorized by the presiding judge upon a convincing showing that evidence in addition to the affirmative direct case and documents provided in response to the standard document production order is necessary to determine whether an application would serve the public interest. Motions for discovery and objections to privilege assertions shall be submitted ten (10)

days prior to the prehearing conference and shall be resolved at or by the time of the prehearing conference.

- (3) *Motion practice.* No motions to enlarge, change or delete issues, motions for summary decision, motions for reconsideration, interlocutory pleadings, motions to intervene, or motions for participation by non-parties shall be considered.
- (4) *Petitions to deny.* Petitions to deny must conform to the requirements of Section 22.30, except that petitions may only be filed within twenty (20) calendar days of the filing of the affirmative direct case. Replies to petitions to deny may be filed within ten (10) calendar days of the filing of the petition. Service of petitions to deny must be made by hand or by telecopy on the date of filing.
- (5) *Appearances.* No notice of appearance shall be filed. Failure to enter an appearance, by a principal or through counsel on the date of the prehearing conference and, if held, the date of the hearing, shall be grounds for dismissal of an application.
- (6) *Evidence.* All submissions in connection with an applicant's affirmative direct case and in response to the standard document production order shall be deemed admissible as evidence in the comparative hearing. No objections as to admissibility will be considered. Any additional documentary evidence an applicant wishes to introduce at hearing shall be submitted at the prehearing conference and the presiding judge shall rule on its admissibility at that time.

**§ 22.2010 Decisional criteria.**

The presiding judge shall be guided by the following decisional criteria and the respective weights assigned to each criterion in formulating an initial decision:

- (a) *Communications experience.* Comparative credit may be allowed upon a demonstration that an integrated principal of the applicant has had substantial experience in establishing a new communications service (high range); acting as an integrated principal in a communications service (medium range); or being employed in a managerial capacity in a communications service (low range).
- (b) *Financial qualifications.* Comparative credit may be allowed upon a demonstration that the applicant will be financially qualified to undertake major technological innovations or system expansion after financing the first year of operation without revenue.
- (c) *Service proposal.* Comparative credit may be allowed upon a demonstration of a firm service proposal incorporating any of the following elements:
  - (1) Commitment and ability to deploy services from basic CT-2 service, to Enhanced CT-2 to PCN and other evolving PCS services.
  - (2) Commitment to develop new and innovative uses for PCS technologies, as demonstrated by (A) a firm proposal to incorporate experimental or innovative services within the PCS system, (B) employment of staff sufficiently qualified and experienced to conduct experimental uses of developing technologies, and (C) a history of testing communications technologies under experimental authorizations.
  - (3) Commitment to serve the special needs of the community of license, as demonstrated by a specific and detailed plan describing the challenges posed by serving the community, whether technical, social, or economic, and the precise means by which the applicant intends to meet such challenges.
- (d) *Technical proposal.* The applicant must demonstrate a firm proposal for avoiding interference to existing licensees in the private operational fixed microwave service.

Comparative credit may be allowed upon a demonstration of a superior technical proposal, including exceptional proposals for providing proposed services and avoiding interference.

**§ 22.2011 Resolution of conflicting applications.**

- (a) *Summary decision.* At any time, the Common Carrier Bureau or, if after issuance of the hearing designation order, the presiding judge may issue a decision summarily granting one application and summarily denying all mutually exclusive applications, or may issue a summary denial of any application, if it appears that no material issues of decisional fact exist.
- (b) *Proposed findings and conclusions.* If no hearing is held, the parties shall file proposed findings of fact and conclusions of law at a date specified by the presiding judge at the prehearing conference. Should a hearing be held, the presiding judge may, but need not, receive proposed conclusions of law. Any proposed findings and conclusions shall be limited to sixty (60) typewritten pages, excluding tables of contents and authorities. No replies shall be accepted for filing.
- (c) *Initial decision.* Preferably within sixty (60) days of the prehearing conference, the presiding judge shall issue an initial decision ranking the applicants on the basis of which applicant will best serve the public interest, convenience and necessity. The initial decision should set forth the analysis of the presiding judge, as guided by the weighted decisional criteria in Section 22.2009 of this subpart. The initial decision need not set forth the arguments and positions of each party.
- (d) *Review.* Within twenty (20) days of the release of the initial decision to the parties, any party may appeal the initial decision directly to the Commission by filing exceptions to the initial decision. Such exceptions shall be limited to forty (40) typewritten pages, tables of contents and authorities excluded. Extensions of time to file exceptions shall not be granted and oral argument shall not be held.

**§ 22.2012 Amendment of applications.**

No amendments other than amendments required by Section 1.65 of the rules shall be permitted after the date specified under Section 22.2007(d) of this subpart, except upon leave of the presiding judge.

**§ 22.2013 PCS Service Areas.**

- (a) The PCS Service Area ("PSA") of the PCS system shall be defined by the applicant as the area intended to be served within the area specified in the Public Notice announcing the acceptance of applications for a market.
- (1) No PSA may extend beyond the boundaries of the specified market. Reliable service contours may extend beyond a specified market on a de minimis basis or where the consent of the adjacent PCS licensee has been obtained.
- (2) For purposes of this rule, "de minimis" shall refer to an extension of less than ten (10) percent of the reliable service area for the particular base station in question.
- (b) For purposes of establishing the reliable service area of a station and performing interference studies, applicants must use procedures consistent with [APC Propagation Analysis, to be submitted].

**§ 22.2014 Power limitations.**

Stations in this service shall not be permitted to exceed the effective radiated power indicated below.\*

	Watts (ERP)
Base stations . . . . .	10
Portable stations . . . . .	1
Auxiliary test stations . . . . .	5

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\*/ [The power levels and height limitations specified in these proposed rules is subject to modification upon completion of APC's propagation analyses.]



**§ 22.2015 Antenna height limitations.**

The height of the transmitting antenna radiation center of any station in this service shall not exceed three hundred (300) feet above ground level.

**§ 22.2016 Channel allocation.**

[Reserved.]

**§ 22.2017 Emission limitations.**

[Reserved.]

**§ 22.2018 Transmitter frequency tolerance.**

[Reserved.]

**§ 22.2019 Limitations on effective radiated power.**

[Reserved.]

**§ 22.2020 Compatibility standards.**

[Reserved.]

14. Section 94.15 would be amended by adding new paragraphs (k) and (l) to read as follows:

**§ 94.15 Policy governing the assignment of frequencies.**

- (k) *Sharing with PCS.* The 1850-1990 MHz band is allocated to the private operational fixed microwave ("OFS") service under this Part and to the personal communications service ("PCS") under Part 22. The allocation is co-primary as to OFS licenses issued before [July 1, 1991].<sup>\*/</sup> As to OFS licenses issued on or

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<sup>\*/</sup> [Used as a representative date to indicate the date on which the Commission institutes a rulemaking proceeding to allocate spectrum to PCS in the 1850-1990 MHz band. OFS licensees operating before this date would be grandfathered into co-primary status with PCS. OFS licensees operating under authorizations issued on or after this date would